

HOUSE BILL No. 1814

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-37-2-8; IC 35-41-1-22; IC 35-45.5.

Synopsis: Sexually oriented services. Limits the operating hours of sexually oriented businesses. Prohibits contact between performers and patrons of sexually oriented businesses. Makes other changes concerning sexually oriented businesses, escort services, and out-call services. Defines "person" in the criminal code to include a legal entity, regardless of its form.

Effective: Upon passage; July 1, 2001.

Pond, Goeglein, Kruse, Cook

January 17, 2001, read first time and referred to Committee on Human Affairs.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1814

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-37-2-8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2001]: **Sec. 8. A child commits a delinquent act if, before**
4 **becoming eighteen (18) years of age, the child violates**
5 **IC 35-45.5-4-5 concerning sexually oriented businesses, escort**
6 **services, and out-call services.**

7 SECTION 2. IC 35-41-1-22 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 22. "Person" means a
9 human being, corporation, limited liability company, **limited liability**
10 **partnership**, partnership, unincorporated association, ~~or~~ governmental
11 entity, **or other legal entity.**

12 SECTION 3. IC 35-45.5 IS ADDED TO THE INDIANA CODE AS
13 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
14 2001]:

15 **ARTICLE 45.5 SEXUALLY ORIENTED BUSINESSES;**
16 **ESCORT SERVICES; AND OUT-CALL SERVICES**

17 **Chapter 1. Purpose; Findings**

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Sec. 1. The purpose of this article is to:

- (1) regulate sexually oriented businesses, escort services, and out-call services in order to promote the health, safety, morals, and general welfare of the citizens of Indiana and to protect children; and**
- (2) establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses, escort services, and out-call services in Indiana.**

Sec. 2. It is not the purpose or intent of this article to:

- (1) impose a limitation or restriction on the content of communicative materials, including sexually oriented materials;**
- (2) restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or by the Constitution of the State of Indiana; or**
- (3) deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.**

Sec. 3. It is not the intent of this article to condone or legitimize the distribution or exhibition of obscene material.

Sec. 4. The general assembly makes the following findings concerning the adverse secondary effects on communities and individuals of the use of sexually oriented businesses, escort services, and out-call services:

- (1) Sexually oriented businesses, escort services, and out-call services lend themselves to ancillary unlawful and unhealthy activities that are not being controlled by the operators of sexually oriented businesses, escort services, and out-call services in the absence of regulation.**
- (2) Certain employees of adult theaters and adult cabarets engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.**
- (3) Sexual acts, including masturbation, oral sex, and anal sex, occur at sexually oriented businesses during the course of providing escort services and out-call services, especially at sexually oriented businesses that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows.**
- (4) Offering and providing private or semiprivate booths or cubicles encourages sexual acts that create unhealthy conditions.**
- (5) Persons frequent certain adult theaters, adult arcades, and**



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1 other sexually oriented businesses for the purpose of engaging
2 in sex within the premises of the sexually oriented business.

3 (6) Numerous communicable diseases may be spread by
4 activities occurring in sexually oriented businesses and during
5 the provision of escort services and out-call services, including
6 syphilis, gonorrhea, human immunodeficiency virus infection
7 (HIV-AIDS), genital herpes, hepatitis salmonella,
8 trichomoniasis, chancroid, campylobacter and shigella
9 infections, chlamydia, myoplasmal, and ureoplasmal
10 infections.

11 (7) Since 1981 there has been an increasing cumulative
12 number of reported cases of AIDS caused by the human
13 immunodeficiency virus (HIV) in the United States.

14 (8) Relevant statistics reveal that a total of 5,419 AIDS cases
15 have been reported in Indiana since January 1, 1999.

16 (9) Since 1981 there has been an increasing cumulative
17 number of persons testing positive for the HIV antibody test
18 in Indiana.

19 (10) The number of cases of early syphilis in the United States
20 reported annually has risen with 33,613 cases reported in
21 1982 and 45,200 cases reported through November 1990.

22 (11) The number of cases of gonorrhea in the United States
23 reported annually remains at a high level, with over five
24 hundred thousand cases reported in 1990.

25 (12) The surgeon general of the United States, in a report
26 made October 22, 1986, advised the American public that
27 AIDS and HIV infection may be transmitted through sexual
28 contact, intravenous drug abuse, and exposure to infected
29 blood and blood components, and from an infected mother to
30 her newborn.

31 (13) According to the best scientific evidence, AIDS and HIV
32 infection, as well as syphilis and gonorrhea, are principally
33 transmitted by sexual disease.

34 (14) Sanitary conditions in some sexually oriented businesses
35 are unhealthy, in part, because the activities conducted there
36 are unhealthy and, in part, because of the unregulated nature
37 of the activities and the failure of the owners and operators of
38 the facilities to self-regulate the activities and maintain the
39 facilities.

40 (15) The findings in subdivisions (1) through (14) raise
41 substantial government concerns.

42 (16) Sexually oriented businesses, escort services, and out-call

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services have operational characteristics that should be reasonably regulated in order to protect the substantial government concerns raised in the findings in subdivisions (1) through (14).

(17) The general welfare, health, morals, and safety of the citizens of Indiana will be promoted by the enforcement of this article.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Adult arcade" means any place:

- (1) to which the public is permitted or invited; and
- (2) where coin operated, slug operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to have regularly shown to less than six (6) persons per machine at any one (1) time images that are characterized by their emphasis on matter exhibiting or describing specified sexual activities or specified anatomical areas.

Sec. 3. "Adult bookstore" means a commercial establishment that has as a significant or substantial part of its stock-in-trade, derives a significant or substantial part of its revenues from, devotes a significant or substantial part of its interior business or advertising to, or maintains a substantial section of its sales or display space to the sale or rental of, for any form of consideration, at least one (1) of the following:

- (1) Books, magazines, periodicals, other printed matter, photographs, photographic media, or other visual representations that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas.
- (2) Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the person operating the device or others.

Sec. 4. "Adult cabaret" means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

- (1) Persons who appear seminude.
- (2) Performances that are characterized by the exposure of



specified anatomical areas or by specified sexual activities.

(3) Photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas.

Sec. 5. "Adult motel" means a motel, hotel, or similar commercial establishment that:

(1) offers public accommodations, for any form of consideration, that provide patrons with photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas; and

(2) advertises the availability of this sexually oriented type of material by means of:

(A) a sign visible from the public right-of-way; or

(B) any off-premises advertising, including newspapers, magazines, pamphlets, leaflets, radio, or television;

(3) offers a sleeping room for rent for a period of less than ten (10) hours; or

(4) allows a tenant or occupant to subrent the sleeping room for a period of less than ten (10) hours.

Sec. 6. "Adult motion picture theater" means a commercial establishment where photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

Sec. 7. "Adult novelty store" means an adult bookstore.

Sec. 8. "Adult theater" means a theater, a concert hall, an auditorium, or a similar commercial establishment that, for any form of consideration, regularly features:

(1) persons who appear seminude or in a state of nudity; or

(2) performances;

that are characterized by their emphasis on the exposure of specified anatomical areas or specified sexual activities.

Sec. 9. "Adult video store" means an adult bookstore.

Sec. 10. "Characterized by an emphasis on" means the dominant or principal theme of an object or premises.

Sec. 11. "Bona fide college" means the following:

(1) A state educational institution (as defined in IC 20-12-0.5-1).

(2) A postsecondary proprietary educational institution accredited under IC 20-1-19-4.

Sec. 12. (a) "Escort" means a person who, for any form of

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consideration, agrees or offers to:

(1) act as a companion, guide, or date for another person; or

(2) model lingerie or perform a striptease for another person.

(b) The term does not include a guide for a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment.

Sec. 13. "Escort agency" means a person that furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for any form of consideration.

Sec. 14. "Operate or cause to be operated" means to:

(1) cause to function;

(2) put or keep in a state of doing business; or

(3) have authority to exercise overall operational control individually or with other persons.

Sec. 15. "Photographic media" means closed circuit television transmissions, films, motion pictures, videocassettes, compact discs, digital video discs, slides, computer displays, and other similar photographic reproductions.

Sec. 16. "Regularly shown" means a consistent or substantial course of conduct such that:

(1) photographic media; or

(2) performances;

exhibiting specified anatomical areas or specified sexual activity constitute a substantial portion of the photographic media or performances offered as part of an ongoing business.

Sec. 17. "Seminude" means a state of dress in which opaque clothing covers no more than the:

(1) genitals;

(2) pubic area; and

(3) nipple of a human female breast;

as well as parts of the body covered by supporting straps or devices.

Sec. 18. "Nude model studio" means any place where persons regularly appear either:

(1) seminude; or

(2) in a state of nudity;

for any form of consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

Sec. 19. "Out-call service" means seminude dancing or

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exhibition, for any form of consideration, off the premises of a sexually oriented business.

Sec. 20. "Sexual encounter establishment" means a business or commercial establishment that, as one (1) of its primary business purposes, offers for any form of consideration a place where two (2) or more persons may congregate, associate, or consort:

(1) for the purpose of specified sexual activities; or

(2) when one (1) or more persons are seminude.

Sec. 21. (a) "Sexually oriented business" means any of the following businesses or commercial establishments:

(1) Adult arcade.

(2) Adult bookstore.

(3) Adult novelty store.

(4) Adult video store.

(5) Adult cabaret.

(6) Adult motel.

(7) Adult motion picture theater.

(8) Adult theater.

(9) Nude model studio.

(10) Sexual encounter establishment.

(b) The term does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sec. 22. "Specified anatomical areas" means any of the following:

(1) Human genitals in a state of sexual arousal.

(2) The appearance of the cleft of the buttocks, anus, male or female genitals, or nipple of the human female.

(3) A state of dress that fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or nipple of the human female.

Sec. 23. "Specified sexual activities" means any of the following:

(1) Intentional fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breasts.

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

(3) Excretory functions as part of or in connection with any of the activities described in subdivisions (1) through (2).

Sec. 24. "State of nudity" means the following:

(1) Nudity (as defined in IC 35-45-4-1).

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(2) Anal cleft or cleavage with less than a fully opaque covering.

Sec. 25. "Viewing room" means a room, a booth, or an area of less than one hundred fifty (150) square feet where a customer or patron of a sexually oriented business would ordinarily be positioned while watching photographic media.

Chapter 3. Nudity

Sec. 1. (a) A person who knowingly or intentionally appears in a state of nudity in the presence of another person:

- (1) on the premises of a sexually oriented business; or
- (2) while engaged in an out-call service;

commits a Class A misdemeanor.

(b) It is a defense to a violation under this section that the person appeared in a state of nudity in a modeling class operated:

- (1) by a bona fide college; or
- (2) in a structure:
 - (A) that has no sign visible from the exterior of the structure and no other advertising that indicates that a seminude person or a person in a state of nudity is available for viewing;
 - (B) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class;
 - (C) where not more than one (1) model on the premises is in a state of nudity or seminude at any one (1) time; and
 - (D) where persons less than eighteen (18) years of age are not employed.

Sec. 2. A person who knowingly or intentionally exhibits specified sexual activities:

- (1) on the premises of a sexually oriented business; or
- (2) while engaged in an out-call service;

commits a Class A misdemeanor.

Chapter 4. Presence of Children

Sec. 1. A person with authority to exclude a person from a sexually oriented business who knowingly or intentionally allows a person less than eighteen (18) years of age on the premises of a sexually oriented business commits a Class A misdemeanor.

Sec. 2. A nude model studio that employs a person less than eighteen (18) years of age commits a Class A misdemeanor.

Sec. 3. An escort agency or out-call service that knowingly or intentionally:

- (1) employs a person who is less than eighteen (18) years of age; or



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(2) communicates to a person that a person less than eighteen (18) years of age is available to be an escort or provide out-call services;
 commits a Class A misdemeanor.

Sec. 4. A person who knowingly or intentionally:

(1) acts as an escort or provides out-call services; or
 (2) agrees to act as an escort or provide out-call services;
 for a person who is less than eighteen (18) years of age commits a Class A misdemeanor.

Sec. 5. A person less than eighteen (18) years of age who knowingly or intentionally:

(1) enters the premises of a sexually oriented business;
 (2) acts as an escort;
 (3) provides out-call services; or
 (4) solicits or agrees to receive, for any form of consideration, escort or out-call services;
 commits a Class A misdemeanor.

Chapter 5. Minimum Distance Requirements

Sec. 1. A person who knowingly or intentionally appears seminude in a place that:

(1) is a sexually oriented business; and
 (2) is not:
 (A) at least six (6) feet from a patron or customer of the sexually oriented business; and
 (B) on a stage at least two (2) feet above the floor used by customers and patrons of a sexually oriented business;
 commits a Class A misdemeanor.

Sec. 2. A person who, while seminude, knowingly or intentionally touches:

(1) a patron or customer; or
 (2) the clothing of a patron or customer;
 of a sexually oriented business or an out-call service commits a Class A misdemeanor.

Sec. 3. A person, while a patron or customer of a sexually oriented business or an out-call service, knowingly or intentionally touches:

(1) a person; or
 (2) the clothing of a person;
 who is seminude or in a state of nudity commits a Class A misdemeanor.

Chapter 6. Hours of Operation

Sec. 1. This chapter does not apply to an adult motel.



1 **Sec. 2. A sexually oriented business or an out-call service that**
 2 **knowingly or intentionally operates:**

3 (1) after 12 a.m. and before 9 a.m. on Monday, Tuesday,
 4 Wednesday, Thursday, Friday, or Saturday; or

5 (2) after 12 a.m. and before noon on Sunday;

6 **commits a Class A misdemeanor.**

7 **Chapter 7. Viewing Rooms**

8 **Sec. 1. This chapter does not apply to an adult motel.**

9 **Sec. 2. A person who knowingly or intentionally operates or**
 10 **causes the operation of a viewing room that has an area within the**
 11 **viewing room that is not visible from the entrance of the viewing**
 12 **room because of an obstruction such as a door, curtain, partition,**
 13 **wall, merchandise, or display rack, commits a Class A**
 14 **misdemeanor.**

15 **Sec. 3. A person who knowingly or intentionally operates or**
 16 **causes the operation of a viewing room that is occupied by more**
 17 **than one (1) person at a time commits a Class A misdemeanor.**

18 **Chapter 8. Miscellaneous Provisions**

19 **Sec. 1. Each day that a violation under this article occurs is a**
 20 **separate violation.**

21 **Sec. 2. In addition to any other penalty imposed under this**
 22 **article, a person who operates or causes the operation of a sexually**
 23 **oriented business where a violation of this article has occurred is**
 24 **subject to an action for an injunction to stop the violation. An**
 25 **action under this section may be commenced by:**

26 (1) the prosecuting attorney in the county where the violation
 27 occurred;

28 (2) the county attorney in the county where the violation
 29 occurred; or

30 (3) the attorney for a city or town in which the violation
 31 occurred.

32 **Sec. 3. (a) This section does not apply to a portion of an adult**
 33 **motel that is rented to a customer for use as a permanent or**
 34 **temporary habitation.**

35 **(b) As a condition of doing business in Indiana:**

36 (1) an owner of; or

37 (2) a person who operates or causes to be operated;

38 **a sexually oriented business shall permit law enforcement officers**
 39 **in the performance of any function connected with the enforcement**
 40 **of this article, normally and regularly conducted by the law**
 41 **enforcement officer, to inspect the parts of the premises of a**
 42 **sexually oriented business where employees and patrons are**

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1 permitted for the purpose of ensuring compliance with this article
 2 at any time the sexually oriented business is occupied or open for
 3 business.

4 **Sec. 4. A political subdivision may adopt ordinances to enact**
 5 **local zoning or licensing regulations, or both, concerning:**

- 6 (1) sexually oriented businesses;
- 7 (2) escorts and escort services; and
- 8 (3) out-call services;

9 **if the regulations are not less restrictive than the provisions of this**
 10 **article.**

11 **SECTION 4. [EFFECTIVE JULY 1, 2001] (a) If:**

- 12 (1) any provision of IC 35-45.5, as added by this act; or
- 13 (2) the application to any person or circumstance of any
- 14 provision of IC 35-45.5, as added by this act;

15 **is held invalid, the invalidity does not affect other provisions that**
 16 **can be given effect without the invalid provision or application.**

17 **(b) Each part and application of IC 35-45.5, as added by this act,**
 18 **is severable. If any provision or application of IC 35-45.5, as added**
 19 **by this act, is held invalid, the invalidity does not affect the**
 20 **remainder of IC 35-45.5, as added by this act, unless:**

- 21 (1) the remainder is so essentially and inseparably connected
- 22 with, and so dependent upon, the invalid provision or
- 23 application that it cannot be presumed that the remainder
- 24 would have been enacted without the invalid provision or
- 25 application; or
- 26 (2) the remainder is incomplete and incapable of being
- 27 executed in accordance with the legislative intent without the
- 28 invalid provision or application.

29 **SECTION 5. [EFFECTIVE UPON PASSAGE] (a) IC 35-45.5, as**
 30 **added by this act, applies to all violations committed by a sexually**
 31 **oriented business, an escort service, an out-call service, or another**
 32 **person after June 30, 2001, regardless of when the business or**
 33 **service was established.**

34 **(b) The Indiana alcoholic beverage commission shall adopt rules**
 35 **and modify permits issued or renewed by the Indiana alcoholic**
 36 **beverage commission after the effective date of this SECTION to**
 37 **enforce the provisions of IC 35-45.5, as added by this act, after**
 38 **December 31, 2001.**

39 **SECTION 6. An emergency is declared for this act.**

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